

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs May 22, 2007

**TOM MOORE, III v. STATE OF TENNESSEE AND WARDEN, VIRGINIA  
LEWIS**

**Direct Appeal from the Circuit Court for Bledsoe County  
No. 61-2006     Thomas W. Graham, Judge**

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**No. E2006-02458-CCA-R3-HC - Filed December 12, 2007**

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The petitioner, Tom Moore, III, pro se appeals the summary dismissal of his petition for habeas corpus relief. The petitioner alleges that his original indictment was void and defective because three separate charges were all listed as “Count One,” thus rendering the court without jurisdiction. The petitioner’s allegations are both factually and legally incorrect. We affirm the trial court’s summary dismissal.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR. and ALAN E. GLENN, JJ., joined.

Tom Moore, III, Pikeville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Mark A. Fulks, Assistant Attorney General; and James Michael Taylor, District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The petitioner was indicted by the Shelby County grand jury in March of 1991. The grand jury returned three indictments against the petitioner. Indictment number 91-02207 charged the petitioner with the aggravated rape of SW,<sup>1</sup> a person less than thirteen years of age during the period of time between May 1, 1990, and August 31, 1990. Indictment number 91-02208 charged the petitioner with the aggravated rape of SW, a person less than thirteen years of age during the period of time between October 1, 1990, and October 31, 1990. Indictment number 91-02209 charged the petitioner with rape of Kimberly Watts during the period of time between September 1, 1990, and October 31, 1990.

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<sup>1</sup>The full name of the victim has been redacted because she was a minor at the time of the crimes.

The petitioner was tried and convicted as charged in Indictments number 91-02207 and 91-02208 of two counts of aggravated rape. The petitioner was found not guilty under Indictment number 91-02209.

The trial court dismissed the petition for habeas corpus relief for failure to state a claim upon which relief may be granted. The trial court found that the petitioner's assertion that three separate offenses were charged under Count 1 of a single indictment was without merit. Our review of the record reflects that the petitioner's allegations are simply incorrect. There were not three separate charges in any of the indictments; rather, there were three separate indictments.

In order to obtain habeas corpus relief, the petitioner must demonstrate that the convicting judgment was void and facially invalid because (1) the convicting court was without jurisdiction or authority to sentence the petitioner; or (2) the petitioner's sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). The petitioner has not demonstrated that the judgment of conviction was void and, therefore, is not entitled to habeas corpus relief.

#### Conclusion

Based on the foregoing and the record as a whole, we affirm the trial court's summary dismissal of the petition for habeas corpus relief.

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JOHN EVERETT WILLIAMS, JUDGE